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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,031	10/25/2000	Yoshio Akiyama	107688	9166

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EXAMINER

NORDMEYER, PATRICIA L

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 05/21/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/674,031

Applicant(s)

AKIYAMA ET AL.

Examiner

Patricia L. Nordmeyer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase “a plurality of concave portions being disposed along the left and right edges of the label with equal interval in a vertical direction, so as to locate the edge of the label in said concave portions” in claim 5 is unclear, which renders the claim vague and indefinite. It is unclear from the claim language where the concave portions are located, in the label or in the container.

The phrase “a thick portion is formed on an inner surface of the body” in claim 6 is unclear, which renders the claim vague and indefinite. It is unclear from the claim language what is meant by “inner surface”, the part of the container underneath the surface of the label or the surface inside of the opening of the container.

Correction/clarification is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Makowski (USPN 3,207,822).

Makowski discloses a container of desired size and shape formed from parison, polyethylene, (Column 1, lines 11 – 18) with a label that in-molded to the surface (Column 2, lines 15 – 17 and Figure 2). The wall of the container is thicker where the edge of the label is attached (Figure 7, #125A and 20B) to the container.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1 – 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan et al. (USPN 5,172,936) in view of Weckman (USPN 4,387,816).

Sullivan et al. discloses a container with a label attached to the surface by in-molding the

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label with for a small section that is meant to be removed (Column 7, claim 27) to indented surface between ribs on the top and bottom of the label (Figure 1). However, Sullivan et al. fails to disclose a vertical rib on the left and right edges of the label, lateral ribs on the top and bottom and vertical ribs on the right and left of the label, the label positioned in the ribs, the left and right edges of being cut into a corrugate shape and a plurality of concave portions being disposed along the left and right edges of the label with equal interval in a vertical direction to locate the edge of the label in said concave portion.

Weckman teaches a thermoplastic (Column 3, lines 41 – 43) formed by injection, extrusion and/or blow molding (Column 3, lines 43 – 53) into a shape that has both lateral ridges on the bottom and top and vertical ridges on the left and right of a label area (Figure 1, #28 and 32), where the label would rest within the ridges, in a container for the purpose of forming a container that controls the amount of stress in the label area by reducing the stress crack or crazed areas with help from the ridge areas surrounding the label (Column 4, lines 47 –51).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the shape of the label area in Sullivan et al. in order to form a container that controls the amount of stress in the label area by reducing the stress crack or crazed areas with help from the ridge areas surrounding the label (Column 4, lines 47 –51) as taught by Weckman.

Regarding the corrugate shape of the label and the surface to which it is applied in claims 4 and 5, it is well settled that a particular shape of a prior invention carries no patentable weight unless the applicant can demonstrate that the new shape provides significant unforeseen improvements to the invention. See *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947) Also,

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see *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966) In the instant case, the application does not indicate any new, significant attributes of the invention due to its shape which would have been unforeseen to one of ordinary skill in the art.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to change the shape to change the shape of the label to give a decorative appearance and to change the shape of the mold in which the container is being formed to coincide with the shape of the label. One skilled in the art would have been motivated to do so in order to give the label and container combination a selected outer appearance.

### *Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,079,057 to Heider, U.S. Patent No. 4,662,528 to Slat and U.S. Patent No. 4,802,205 to Darr are state to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (703) 306-5480. The examiner can normally be reached on Monday thru Friday from 8:15 a.m. until 4:45 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Patricia L. Nordmeyer  
Examiner  
Art Unit 1772

*pln*  
pln

May 17, 2002

*William P. Watkins III*

**WILLIAM P. WATKINS III  
PRIMARY EXAMINER**